

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
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In the Matter of	)	
	)	
Amendment of Parts 2 and 15 to	)	ET Docket No. 93-1
Prohibit Marketing of Radio Scanners	)	
Capable of Intercepting Cellular	)	
Telephone Conversations	)	

**REPLY COMMENTS OF  
THE CELLULAR TELECOMMUNICATIONS INDUSTRY ASSOCIATION**

The Cellular Telecommunications Industry Association ("CTIA") hereby replies to comments filed in response to the Notice of Proposed Rulemaking ("Notice") in the above-captioned proceeding.

**Introduction and Summary**

In its initial comments in this proceeding, CTIA expressed support for the Commission's proposed implementation of the restrictions on scanning receivers mandated by Section 403(a) of the Telephone Disclosure and Dispute Resolution Act ("the Act").<sup>1/</sup> CTIA also suggested several modifications to the proposed rules to prevent disputes and confusion over the meaning of the phrase "readily altered" used in the statute. Specifically, to ensure that scanners are not readily alterable to receive cellular transmissions, we proposed that

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<sup>1/</sup> Section 403(a), which adds Section 302(d) to the Communications Act of 1934, bars the manufacture or importation of scanning receivers that are capable of receiving cellular transmissions or are readily alterable to receive such transmissions. Section 302(d) also bars scanning receivers from being equipped with digital-to-analog converters.

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scanning receivers and frequency converters be required to contain a microprocessor chip that is designed to block cellular frequencies and is difficult to detach from the scanner's circuit board. We also asked the Commission to require applicants for equipment authorization to explain why their equipment is not "readily alterable" to receive cellular transmissions.<sup>2/</sup>

The Commission's proposed equipment authorization rules received strong support from providers of wireless communications,<sup>3/</sup> and, significantly, none of the manufacturers of scanners objected to the Commission's proposals.<sup>4/</sup> Most of the objections to the proposed rules came from so-called radio "hobbyists," who argued that the Commission's rules will not protect the privacy of cellular telephone conversations. The intent of these commenters was not to provide any helpful suggestions to improve the rules, but simply to restate their position that there should be no restrictions on scanners at all. By adopting the Act, Congress rejected that position, and it is therefore irrelevant to this proceeding.

CTIA believes strongly that the adoption of the proposed rules, with the modifications proposed in our initial comments, will significantly reduce the commercial availability of scanners that can be used to eavesdrop on cellular communications. The bar on digital-to-

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<sup>2/</sup> We note that other parties also support requiring such an explanation. See Comments of Vanguard Cellular Systems, Inc. at 2 (filed Feb. 22, 1993); Comments of Southwestern Bell Mobile Systems, Inc. at 3 (filed Feb. 22, 1993).

<sup>3/</sup> See Comments of Vanguard Cellular Systems, Inc.; Comments of GTE Service Corporation (filed Feb. 22, 1993); Comments of Southwestern Bell Mobile Systems, Inc.; Comments of Fleet Call, Inc. (filed Feb. 22, 1993).

<sup>4/</sup> See Comments of Uniden America Corporation (filed Feb. 17, 1993) (generally supporting the Commission's proposed rules); Comments of Tandy Corporation (filed Feb. 22, 1993) (objecting only to the Commission's proposal to impose sanctions on retailers for violations of the scanner rules).

analog conversion capability will protect the additional measure of privacy that will be provided to users as the cellular industry implements digital voice coding. As the Commission has recognized, effective privacy protection also requires a bar on the manufacture or importation of converters capable of tuning cellular frequencies. Legitimate use of converters by amateur radio operators will not be affected if the Commission requires that such equipment contain microprocessor chips designed to block cellular frequencies. The Commission should also clarify that the proposed rules are not intended to restrict the availability of scanner equipment to Federal, state and local governments and electronic communications service providers. Such an exemption is required by Section 403(c) of the Act.

**I. The Commission's Proposed Rules, Modified as Suggested by CTIA, Will Enhance the Privacy of Cellular Communications While Protecting the Legitimate Use of Scanning Receivers**

A number of commenters argue that the Commission's proposed rules are flawed because they will not effectively safeguard the privacy of cellular calls.<sup>5/</sup> These commenters point out that millions of scanning receivers capable of tuning cellular frequencies are already in use, and that such receivers will remain available for sale for another year.<sup>6/</sup> Some also

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<sup>5/</sup> See, e.g., Comments of Jeffrey Krauss at 7-10 (filed Feb. 22, 1993); Comments of PrivaFone (filed Feb. 18, 1993); Comments of Jack Mor (filed Feb. 24, 1993).

<sup>6/</sup> See, e.g., Comments of Brian Morgan (filed Feb. 24, 1993); Comments of Jeffrey Krauss at 8 and n.5.

state that other equipment, such as old UHF television sets and cellular mobile units, permits interception of cellular communications.<sup>7/</sup>

Rather than proposing to strengthen the Commission's proposed rules, however, these parties would have the Commission weaken or abandon its proposals and place the burden solely on cellular carriers or manufacturers to protect the privacy of cellular telephone calls.<sup>8/</sup> In fact, the goal of these commenters is not to perfect the proposed rules, but rather to re-argue their case against any restrictions on scanners.

With the enactment of Section 403(a), the time for such an argument is past. Congress specifically found that the wide availability of scanning receivers capable of receiving, or of being easily altered to receive, cellular frequencies poses a substantial threat to the privacy of cellular phone conversations.<sup>9/</sup> Congress chose to address this specific threat prospectively by requiring scanner manufacturers to design their future equipment without such capabilities.<sup>10/</sup>

The argument that the Commission's rules will not contribute to the privacy of cellular communications is simply wrong. If the Commission's proposed rules are adopted

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<sup>7/</sup> See, e.g., Comments of Jeffrey Krauss at 8, 9 n.8; cf. Comments of Grove Enterprises, Inc. (filed Feb. 8, 1993) (proposing to define "scanning receiver" as a "channelized VHF/UHF radio receiver").

<sup>8/</sup> See, e.g., Comments of Late Night Software at 2-3 (filed Feb. 22, 1993); Comments of Jiro Nakamura at 2 (filed Feb. 24, 1993); Comments of Jeffrey Krauss at 9-10, 16-17.

<sup>9/</sup> See H.R. Rep. No. 207, 102d Cong., 1st Sess. 31 (reprinted in 138 Cong. Rec. S17121 (daily ed. Oct. 7, 1992) (Statement of Sen. Pressler).

<sup>10/</sup> See 47 U.S.C. § 302(d); 138 Cong. Rec. S17121 (daily ed. Oct. 7, 1992) (Statement of Sen. Pressler) ("The purpose of the amendment is to require manufacturers of scanners to design their equipment so that the equipment does not allow users to listen to cellular calls.").

with the modifications proposed by CTIA, they will significantly reduce, if not eliminate, the commercial availability of scanners that can be used to eavesdrop on cellular calls. While neither the statute nor the rules will take existing scanners out of circulation, the Act and the Commission's implementing regulations will mean that the proportion of scanners with the capability of receiving cellular communications will decline significantly. There can be no doubt that such a result will serve to "increase the privacy protections of cellular telephone users."<sup>11/</sup>

The Commission's proposed rule to deny equipment authorization to scanning receivers that can be equipped with decoders that convert digital cellular transmissions to analog voice audio is a particularly critical means of ensuring privacy, despite claims to the contrary.<sup>12/</sup> The conversion of cellular systems from analog to digital will provide

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<sup>11/</sup> Statement of Sen. Pressler.

While CTIA supports efforts to ensure the privacy of all wireless communications, the Act prevents only the manufacture or importation of scanners capable of receiving "frequencies allocated to the domestic cellular radio telecommunications service." 47 U.S.C. § 302(d)(1). Those frequencies are specifically defined in the Commission's rules. See 47 C.F.R. § 22.902. Thus, requests that the Commission extend the Act's privacy protections in this proceeding to cover Personal Communication Services (PCS) and Specialized Mobile Radio (SMR) service, see Comments of Southwestern Bell Mobile Systems at 2 (PCS); Comments of Fleet Call, Inc. (SMR), appear to be beyond the scope of the statute. Cf. Comments of GTE Service Corporation at 2 n.1 (restrictions on equipment used to monitor PCS calls in the 2 GHz band should be considered in a separate proceeding).

<sup>12/</sup> See Comments of Grove Enterprises at 1; cf. Comments of Jeffrey Krauss at 8-9 and n.7 (erroneously arguing that the bar on digital-to-analog conversion is unnecessary because the patent laws will protect the digital voice coding technology used by the cellular industry). The statute explicitly requires a rule denying equipment authorization to scanners that can be equipped with voice decoders. 47 U.S.C. § 302(d)(1)(C).

additional privacy protection for cellular subscribers.<sup>13/</sup> The new measure of privacy afforded by digital transmission will be fully protected only if scanners cannot be equipped with voice decoders.<sup>14/</sup>

The Commission's proposed rules would not unduly restrict legitimate scanner use. Concerns that the redesign of microprocessor chips to block cellular frequencies would result in prohibitive cost increases<sup>15/</sup> appear unfounded. No scanning receiver manufacturer potentially subject to such increases raised the cost issue as a problem.<sup>16/</sup> One such manufacturer acknowledges that the proposed bar on digital-to-analog conversion capability would have no impact on existing models of scanners.<sup>17/</sup>

## **II. The Commission's Proposal to Deny Equipment Authorization to Frequency Converters That Tune, or Can Be Readily Altered to Tune, Cellular Frequencies is Lawful and Necessary**

The Commission should reject arguments that it has exceeded its statutory authority by proposing to deny equipment authorization to converters that tune, or can be readily

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<sup>13/</sup> Cf. Comments of Jeffrey Krauss at 8 (acknowledging that "[d]igital voice coding will change the security of cellular calling dramatically").

<sup>14/</sup> See Comments of Southwestern Bell Mobile Systems, Inc. at 4.

<sup>15/</sup> See Comments of Cpl Frank Carson at 2 (filed Feb. 11, 1993); cf. Comments of Jeffrey Krauss at 10-12.

<sup>16/</sup> See Comments of Uniden America Corporation; Comments of Tandy Corporation.

<sup>17/</sup> Comments of Uniden America Corporation at 3.

altered to tune, cellular frequencies.<sup>18/</sup> If converters capable of tuning cellular frequencies remain available, the legislative intent to prevent the use of scanning receivers to listen to cellular communications<sup>19/</sup> will be frustrated because scanners capable of tuning frequencies converted down from the cellular band could still be used to listen to cellular calls.

As CTIA explained in its comments, the Commission can effectively implement a ban on frequency converters capable of tuning cellular transmissions if it requires that such converters contain a microprocessor chip that is designed to block the receipt of cellular frequencies and is difficult to detach from the circuit board.<sup>20/</sup> Currently, converters are designed without microprocessor chips and, thus, lack the "brain power" necessary to lock-out certain frequencies. To prevent the use of such converters to receive cellular frequencies, the Commission would have to ban all converters that tune into the 800 MHz

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<sup>18/</sup> See Comments of Grove Enterprises at 2; Comments of William C. Wells at 2 (filed Feb. 22, 1993).

Several commenters support the Commission's proposal to deny equipment authorization to converters capable of tuning cellular frequencies. See Comments of GTE Service Corporation at 1-2; Comments of Vanguard Cellular Systems, Inc. at 2; Comments of Southwestern Bell Mobile Systems, Inc. at 2.

<sup>19/</sup> See Statement of Sen. Pressler (purpose is to ban equipment that allows users to listen to cellular communications); cf. 137 Cong. Rec. H6755 (daily ed. Sept. 24, 1991) (statement of Cong. Markey) (purpose is to "safeguard the privacy of cellular communications").

<sup>20/</sup> CTIA Comments at 7-8.

A number of commenters claim that the Commission's effort to ban frequency converters capable of tuning cellular transmissions is futile, since such converters are simple devices which can be easily built by electronics hobbyists to receive cellular frequencies. See, e.g., Comments of Jack Mor at 1; Comments of Brian Morgan at 1; Comments of Late Night Software at 2. This argument is beside the point. Speculation that some individuals might build such devices even if they are ruled unlawful does not justify a policy of permitting such behavior.

band.<sup>21/</sup> By requiring that cellular transmissions be blocked by a microprocessor chip, as CTIA has proposed, the Commission will avoid imposing such an overly broad restriction on legitimate converter use.

### **III. The Commission Should Clarify that its Proposed Rules Do Not Apply to Equipment Manufactured for Sale to Exempt Users**

CTIA supports the Harris Corporation's request that the Commission modify its proposed rules to clarify that scanning receivers that receive cellular transmissions, and frequency converters used with scanning receivers to receive such transmissions, may continue to be manufactured for sale to entities listed in 18 U.S.C. § 2512(2).<sup>22/</sup> Section 2512(2) exempts Federal, state and local government authorities and electronic communications service providers from restrictions on the possession, manufacture and sale of equipment used for interception of cellular and other communications.<sup>23/</sup> Section 403(c) of the Telephone Disclosure and Dispute Resolution Act clearly states that this exemption remains unaffected by the addition of Section 302(d) of the Communications Act.<sup>24/</sup>

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<sup>21/</sup> Converters that tune into adjacent bands, such as the 902-928 MHz amateur radio band, might also be affected by such a broad-brush approach. See Comments of the American Radio Relay League, Inc. (filed Feb. 22, 1993).

<sup>22/</sup> See Comments of Harris Corporation (filed Feb. 22, 1993). Cf. Comments of GTE Service Corporation at 3 n.2 (supporting exemption for equipment "used by law enforcement personnel in carrying out their duties under a lawful wiretap order").

<sup>23/</sup> Such entities are considered legitimate users of interception equipment under certain specified circumstances. See 18 U.S.C. § 2511.

<sup>24/</sup> See also Statement of Sen. Pressler (expressing intent not to restrict legitimate uses of scanning receivers).



Consistent with the Act's statutory language and with the legislative intent, CTIA supports the proposal to incorporate Section 2512(2)'s exemption into the new scanning receiver rules. To receive authorization for equipment capable of tuning cellular frequencies, manufacturers should be required to certify that their scanners and converters will be sold only to entities listed in Section 2512(2) and to include restrictive legends on marketing materials and on the equipment itself, as proposed by the Harris Corporation.<sup>25/</sup> In addition, the Commission should specifically provide that manufacturers will be held liable both for selling receivers directly to non-exempt users and for selling receivers to retailers who, in turn, sell to non-exempt users.<sup>26/</sup>

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<sup>25/</sup> See Comments of Harris Corporation at Appendix A.

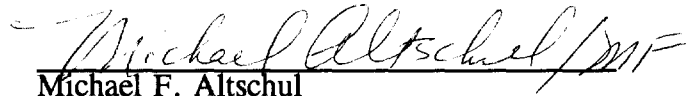
<sup>26/</sup> As a general rule, retailers should be entitled to rely on a manufacturer's certification that its equipment complies with and has been authorized under the Commission's rules. Cf. Comments of Tandy Corporation.

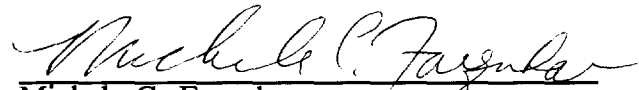
### **Conclusion**

Providers of wireless communications services support the proposed rules, and manufacturers of scanning equipment do not oppose the rules. With the modifications suggested in our initial comments and as stated above, the Commission should adopt the proposed rules.

Respectfully submitted,

CELLULAR TELECOMMUNICATIONS  
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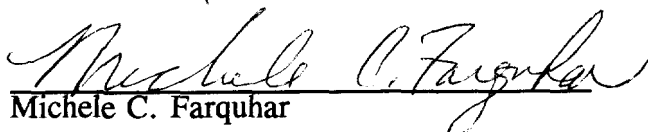
  
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March 8, 1993

## CERTIFICATE OF SERVICE

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\* Comments filed by Tim Pozar, Late Night Software; and James R. Haynes, Chief Engineer, Uniden America Corporation did not include a mailing address. Therefore copies of the foregoing Reply Comments of The Cellular Telecommunications Industry Association could not be served on these parties.